

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Revision of Part 22 of the Commission's  
Rules Governing the Public Mobile Services

CC Docket No. 92-115

Amendment of Part 22 of the Commission's  
Rules to Delete Section 22.119 and Permit  
the Concurrent Use of Transmitters in  
Common Carrier and Non-common Carrier  
Service

CC Docket No. 94-46  
RM 8367

Amendment of Part 22 of the Commission's  
Rules Pertaining to Power Limits for  
Paging Stations Operating in the 931 MHz  
Band in the Public Mobile Service

CC Docket No. 93-116

To: The Commission

**LIMITED PETITION FOR RECONSIDERATION**

Dial Page, Inc. ("Dial Page"), by its attorneys and pursuant to Commission Rule Section 1.106, petitions for limited reconsideration of the Commission's September 9, 1994 Report and Order to the extent it prohibits the shared use of transmitters by different licensees. See FCC 94-201, 9 FCC Rcd \_\_\_\_ (1994). As Dial Page shows below, the Commission's decision to prohibit different licensees from sharing transmitters will unnecessarily raise the cost of paging service to consumers and restrict the growth of regional and nationwide paging systems without any counterbalancing public interest benefit. Accordingly, the Commission should reconsider its decision and delete that restriction from its revised rules.

**I. Introduction.**

1. Dial Page is a Delaware corporation which provides Public Land Mobile Service ("PLMS") and Private Carrier Paging Service

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("PCP") throughout the southeastern United States. Dial Page currently provides service to more than 300,000 paging subscribers. Dial Page provides local, statewide and regional coverage on a variety of frequencies throughout its service area.<sup>1/</sup> In connection with certain regional and statewide paging systems it operates, Dial Page makes use of shared transmitting facilities with other common carrier licenses. The use of these shared transmitting facilities allows Dial Page to offer service to its subscribers at a substantially reduced cost compared to what it would cost if Dial Page had to construct a full-blown paging station at each location of its network. Dial Page's experience in operating shared transmitters gives it a particularly valuable perspective on this issue.

2. In its Report and Order, the Commission determined to abolish Section 22.119, which prohibits the joint licensing of common carrier and private carrier paging system transmitters. The Commission agreed with the various commentators who noted that the restriction unnecessarily increased the cost of service by requiring duplicate dedicated transmitters even though licensees

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<sup>1/</sup> Dial Page currently provides paging services in small-to-medium sized metropolitan areas throughout nine southeastern states and points in between. Throughout those areas, it maintains some 27 offices from which to serve its customers. The total population covered by Dial Page's systems is approximately 49 million. The Company's multi-state system has more than 300,000 subscribers, making Dial Page one of the 20 larger providers of paging services in the United States.

Dial Page also is one of the nation's larger providers of specialized mobile radio ("SMR") service. It provides service to or has agreements to acquire systems providing service to more than 200,000 SMR subscribers.

had spare capacity, and that the effect of such a regulation could be to unnecessarily restrict the development of wide area and nationwide paging systems by raising the marginal cost of establishing such communications systems. Dial Page fully supports that decision for the reasons the Commission has explained.

3. Although the Commission's decision to allow the shared use of transmitters to provide both PLMS and PCP service is fully reasoned and consistent with the public interest, Dial Page disagrees with the Commission's decision not to allow different licensees to share paging transmitters. In reaching this decision, the Commission stated it was concerned that the shared use of the same transmitter by two different licensees may raise questions regarding the control and responsibility for the transmitter. In addition, the Commission stated it was concerned about the broader service disruptions that outages of shared transmitters might cause. As Dial Page shows below, the existence of such "concerns" is no reason to prohibit the shared use of transmitters, given that such a practice has been in existence for decades with no substantial evidence that such shared transmitting facilities are less reliable than individual transmitters.

**II. No substantial control or responsibility issues are raised by multiple licensees sharing transmitter facilities.**

4. Although the Report and Order recites that the Commission is concerned that the shared use of a transmitter may raise questions regarding the control and responsibility for that transmitter, Dial Page fails to see what any such question could be. Indeed, the Report and Order fails to articulate exactly what

is the Commission's concern with respect to shared use. Such a failure does not constitute reasoned decision making.<sup>2/</sup> Each licensee sharing use of a transmitter is responsible for the operation of that equipment and has a duty to maintain control of it and its proper operation.<sup>3/</sup> This is no different conceptually than any other shared facility.<sup>4/</sup> Should a transmitter operate improperly, then each licensee owes a duty to the Commission and the public to correct the improper operation.

5. Moreover, the Commission's concern here regarding control and responsibility is at odds with long standing industry and agency practice. In Radio Relay Corp.- Texas, 46 Rad. Reg. 2d (P&F) 157, 162-64 (Com. Car. Bur. 1979), the Commission approved an applicant's sharing of another licensee's transmitter facilities. Indeed the Commission stated it encouraged such shared use and

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<sup>2/</sup> Quite simply the possibility that a question may exists as to control and responsibility is not a valid basis to formulate a regulation prohibiting use of shared transmitters. In the exercise of reasoned decision making, the Commission is obligated to investigate to determine whether or not such issues exists, identify those issues with enough specificity that reviewing authority can understand the Commission's reasoning, and resolve them by reference to the public interest standard. Merely pointing out vague concerns without any relation to the public interest standard fails to comport with reasoned decision making. See generally Motor Vehicle Manufacturers' Assn. v. State Farm Mutual Insurance Co., 463 U.S. 29, 43 (1983); Camp v. Pitts, 411 U.S. 138 (1973).

<sup>3/</sup> No issue of unauthorized transfer of control is raised by sharing since, by definition, the Commission has licensed each party sharing a transmitter to exercise control over its radio system using the transmitter.

<sup>4/</sup> For example, with respect to transmitting antenna structures, all licensees operating from such a structure are legally responsible for compliance with marking and lighting requirements.

time-sharing agreements.<sup>5/</sup> No concern was expressed in that case with respect to issues of control or responsibility; nor, as discussed below, has the Commission ever expressed such concern when authorizing the shared use of transmitters by multiple licensees in a variety of other services.

6. Sharing of transmitters by multiple licensees has been specifically approved in the private radio service. See Amendment of Part 90, 90 F.C.C.2d 1281, 1335-37 (1982). There the Commission held that "in light of our desire to maximize the options available to private land mobile eligibles in tailoring their communications systems to satisfy their particular communications requirements, we find that the public interest is served by continuing the practice of multiple licensing of shared transmitters at 800 MHz." Of particular interest to the issue here is the Commission's statement:

[W]ith regard to the Commission's ability to administer and enforce its rules regarding multiple licensing. In March 1982, specific rules were adopted to govern multiple licensing. See *Report and Order*, Docket No. 18921, FCC 82-129 (released April 13, 1982). These rules are applicable both below and above 800 MHz. We adopted them confident of our ability to administer and enforce them. Nothing submitted in PR Docket Nos. 79-191 or 79-107 causes us to alter this conclusion.

Id. at 1337.

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<sup>5/</sup> The Commission defined a "shared use" agreement as:

[A]n agreement whereby two or more carriers share the use of a frequency. This can be accomplished through either time-sharing or through the operation of common transmitter facilities.

7. Indeed, in Amendment of Part 90, 93 F.C.C.2d 1127, 1128 (1983), the Commission, in affirming its decision in Private Land Mobile Radio Services, 89 F.C.C.2d 766 (1982),<sup>6/</sup> explained that its prior orders had concluded that "shared and joint use of transmitters promoted the public interest by encouraging the larger and more effective use of radio in the public interest, as mandated by the [Communications Act]."<sup>2/</sup> In fact the Commission even liberalized in certain respects the rules allowing multiple licensing of transmitters. Id. at 1131-34. Significantly, the Commission did not consider issues of control or responsibility cause to restrict sharing. In addressing these issues, this agency did hold that each licensee of a multiple licensed facility must have unlimited access to the facility and that each licensee would be held accountable for its use of the facility. See Private Mobile Radio Services, 89 F.C.C.2d at 790. Those are appropriate regulations which would be equally applicable to other licensees sharing transmitters.

8. Shared licensing of transmit facilities has been approved by this Commission in other contexts as well. In its proposed order in the Domestic Communications-Satellite Facilities proceeding, 34 F.C.C.2d 9, 38 (1972), for example, the Commission

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<sup>6/</sup> In that decision the Commission stated that the multiple licensing of facilities promoted spectrum efficiency, reduced operating costs, allowed licensees to be more responsive to day to day operational requirements, and facilitated the use of better transmitter site locations.

<sup>2/</sup> See, e.g., Multiple Licensing--Safety and Special Radio Services, 24 F.C.C.2d 510 (1970).

considered the shared use of transmit-receive earth stations to be a potential public interest benefit of requiring the sharing of common space segments. The order further contemplated that each carrier sharing the transmit-receive earth station would be separately licensed. Id. at 64. No concerns as to control or responsibility were raised in that proceeding.<sup>8/</sup>

9. Moreover, in the broadcast services, the Commission regularly encourages new non-commercial mutually exclusive broadcasting applicants to enter into share-time agreements. See, e.g., New York University, 17 Rad. Reg. 2d (P&F) 215, 119-125 (1967). In fact, as the Commission has noted, the broadcast rules specifically contemplate share-time agreements, see Rule Sections 73.561 and 73.1715, which are "characterized by dual licensees who have agreed to share portions of the broadcast day on the same or similar technical facilities." Part Time Programming, 82 F.C.C.2d 107, 117 n.18 (1980). Again, the Commission has not appeared to have a serious concern with issues of control or responsibility.

10. In sum, in no other service has the Commission appeared troubled by the dual or multiple licensing of transmitters. Such multiple licensing has been common in the public land mobile services in such instances as cellular base stations located near MSA or RSA borders and in the sharing of paging transmitters in rural areas as a cost savings measure. Despite this history of transmitter sharing, issues of control and responsibility have not

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<sup>8/</sup> See also Public Broadcasting Service, 70 F.C.C.2d 1853, 1856-57 (1979). Public Broadcasting Service, 63 F.C.C.2d 707, 711 (1977).

appeared to arise. In light of the above discussion, the Commission should reconsider its decision in this proceeding and allow the joint licensing and sharing of transmitters.

**III. No issues of reliability are presented  
by licensees sharing transmitting facilities.**

11. The Commission appears troubled by the prospect of increased service outages caused by shared transmitters. There is no need for concern. First, the nature of modern day paging systems is such that they often employ multiple overlapping transmitters to assure adequate in-building penetration. One of the other advantages such coverage depth affords is to minimize, if not eliminate, the possibility of service loss caused by the temporary loss of a transmitter. Unfortunately one of the negative byproducts of the Commission's decision to prohibit sharing of transmitters would be greatly to increase the cost of providing service. This in turn is likely to limit the use of overlapping transmitters by greatly increasing the marginal cost of adding a transmitter site. Thus, the ultimate result of the Commission's action here may be to decrease overall service reliability.

12. Second, the reality is that where an adequate preventive maintenance regime is followed, multi-frequency paging transmitters seldom go out of service. When they do, it is generally as a result of a lightning strike or loss of publicly supplied electrical power at the transmitter site. Both of those occurrences will likely take out of service every transmitter at a



particular site.<sup>2/</sup> Thus, the Commission mandating that separate licensees use separate transmitters is not likely to have an appreciable effect on service reliability.

13. Third, the practical effect of mandating separate transmitters is to increase the cost of providing service to the public. That cost will be borne by the consumer in increased price for service, and/or by cost reductions by the carrier. Cost cutting will likely result in less funds expended for preventive maintenance and newer more reliable equipment. Thus, service reliability could falter because of this very regulation.

#### **IV. Conclusion.**

14. This agency has for decades encouraged licensees to achieve cost savings by the sharing of frequencies. In that time, not one case has arisen to Dial Page's knowledge where a substantial issue was presented relating to control or responsibility for such a shared transmitter. Moreover, this agency has no business mandating service reliability by regulation in an industry which is characterized by free entry and intense competition. In the absence of some evidence that the current practice of allowing sharing of transmitters for different licensees has created service reliability problems, this agency should allow the marketplace to determine whether licensees share

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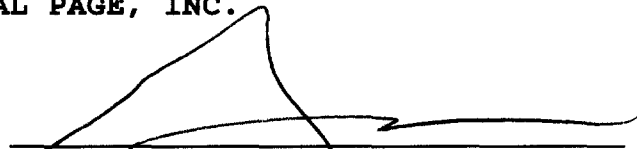
<sup>2/</sup> To guard against the case of loss of power supply, the industry often employs gas or diesel powered generating equipment to compensate for a loss of utility supplied electrical power. If that cost can be spread over more than one licensee sharing a common transmitter, carriers are more likely to install such equipment.

transmitters. Accordingly, the Commission should reconsider its decision in this proceeding and continue to allow the sharing of transmitters by separate licensees.

Respectfully submitted,

**DIAL PAGE, INC.**

By



Gerald S. McGowan  
George L. Lyon, Jr.  
Its Attorneys

Lukas, McGowan, Nace & Gutierrez, Chartered  
1111 19th Street, NW, Suite 1200  
Washington, DC 20036

(202) 857-3500

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